

# Facilities Management Services Request for Proposals

**Issued: January 19, 2023**

**IMPORTANT NOTICE:** A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – Letter i).

## **Designated Contacts for this Procurement:**

**Primary Contact:** Ralph Volcy  
**Secondary Contact:** John Discolo  
**Additional Contacts:** Christopher Catanzaro (*Pre-Proposal Meeting and Interviews only*)

All contacts/inquiries shall be made by email to the following address:  
[ECHDCFacilitiesManagementRFP@esd.ny.gov](mailto:ECHDCFacilitiesManagementRFP@esd.ny.gov)

This RFP is posted on the Empire State Development website:  
<https://esd.ny.gov/doing-business-ny/requests-proposals>

## **MWBE & SDVOB Subcontractor Interest**

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to [ECHDCFacilitiesManagementRFP@esd.ny.gov](mailto:ECHDCFacilitiesManagementRFP@esd.ny.gov). Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

Applications must be sent to the designated Dropbox:  
<https://www.dropbox.com/request/xeYYhQRYUEaWB4dgiimU>

**Submission Deadline: May 4, 2023 by 2:00 PM EST**



**Erie Canal Harbor  
Development  
Corporation**

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## **I. INTRODUCTION**

The mission of the Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), is to revitalize Western New York’s waterfront and restore economic growth to Buffalo based on the region’s legacy of pride, urban significance and natural beauty.

### **A. Invitation to Submit Proposals**

The ECHDC is seeking proposals from qualified firms for Facilities Management Services on State-owned and State-managed property at the Outer Harbor and Canalside (“Buffalo Waterfront”) in Buffalo, Erie County New York. The Facility Manager will work in collaboration with ECHDC facility staff to provide operations and maintenances services for all buildings, structures, utility systems, outdoor ice rink and fountains, and outdoor public spaces.

### **B. Contract Term**

The term of the Contract will be for a period of five (5) years commencing on April 1, 2024 and expiring on March 31, 2029.

At the end of the 5-year term, ECHDC shall have the option to enter into two (2) additional 2-year extensions. The 2-year extensions would expire on March 31, 2031 and March 31, 2033, respectively.

The Contract will also include a “Start Up” period from mid-November 2023 to March 31, 2024, allowing the Facility Manager to hire key staff and transition with the existing Site Facility Manager, in preparation for the 2024 Summer Season.

## **II. PROPERTY OVERVIEW**

### **A. Background**

For decades Buffalo, New York’s waterfront sat desolate and underutilized until 2005, when ECHDC was formed to spearhead Buffalo’s waterfront revitalization and reclaim the area as one of the State’s premiere placemaking destinations. Millions of dollars in both public and private investment have transformed the foot of Main Street into the year-round, mixed-use development known as Canalside, while additional public dollars have resulted in the opening of 200 acres of the Outer Harbor for public use and enjoyment.

The State's transformation of Canalside and the Outer Harbor have led to further private development along the Buffalo River. Currently, Canalside anchors the northern end of the Buffalo Waterfront while the Outer Harbor and Buffalo Harbor State Park anchor the southern end. This nearly 3-mile stretch of property is the home to a large concentration of restaurants, cultural attractions, marinas, and open space, and is linked by a multi-use trail system, seasonal bike ferry, and recently improved streets.



Figure 1 – Buffalo Waterfront aerial view

## B. Premises

Opened to the public in 2008, Canalside features several fully restored facets of the original Erie Canal Harbor including sections of the Canal, the Commercial Slip, Central Wharf boardwalk, and several historic streets and bridges. A year-round attraction that hosts over one million visitors annually, Canalside boasts hundreds of events, festivals, family activities, attractions, historical and cultural programming, art, food, and tours that capitalize on and showcase the diverse assets and resources of Western New York.

Canalside is a 20-acre section of downtown Buffalo bounded on the north by Upper Terrace and Exchange Streets and Perry Boulevard; on the east by Washington Street and Seymour H. Knox III Plaza; on the south by Perry Street and the Buffalo River; and on the west by Erie Street, Marine Drive, and Pearl and Commercial Streets. Canalside's public space ownership is a mix of State and City, while several spaces have been or are currently under private development. The entire area is within the Downtown Pedestrian Transit Mall Special District managed by Buffalo Place, Inc.

Canalside provides various year-round offerings and experiences throughout its public spaces while offering attractions (seasonal boat tours, outdoor roller rink, ice skating rink, carousel, children's museum, and naval park) surrounded by residences, restaurants, and hotels in



mixed-use commercial developments including One Canalside, LECOM Harborcenter, and Heritage Point. Canalside is programmed throughout the summer months (Memorial Day to Labor Day), transforms to a roller rink in the fall (currently August to mid-November), and ice skating rink in the winter (late November through February), with over 1 million visitors annually. Canalside is also adjacent to the KeyBank Center, home to the Buffalo Sabres (NHL) and Buffalo Bandits (NLL) and host of national music acts.

The Outer Harbor, across the Buffalo River from Canalside and extending for two miles along the Lake Erie shoreline, is comprised of nearly 200-acres of open spaces, multi-use trails, marinas, bike park/trails, comfort stations and an outdoor, multi-purpose event area. Since 2015 the Outer Harbor has been programmed throughout the summer months (Memorial Day to Labor Day), with a few events occurring in the fringe months. The Outer Harbor attracts hundreds of thousands of visitors annually, with larger crowds attending outdoor concerts, festivals and one-time events.

The State-owned and State-managed Buffalo Waterfront premises are more fully described below and in **Appendix C**.

## CANALSIDE



Figure 2 – Canalside “Zones”

## Canalside “Zones”

Table II-1

ZONE	Amenity Description (Ownership or “Use Permit”)	Address
<b>1</b>	<b>Central Wharf/City of Buffalo Property</b>	
	Canalside (City of Buffalo)	1 Marine Drive, Buffalo NY 14203
	Longshed (ECHDC)	Address Pending, Buffalo NY 14203
	Carousel (Buffalo Heritage Carousel)	Address Pending, Buffalo NY 14203
	Queen City Bike Ferry (City of Buffalo)	1 Naval Cove, Buffalo NY 14203
<b>2</b>	<b>Main Canal</b>	
	Main Canal/Ice Rink (ECHDC)	130 Main Street, Buffalo NY 14203
	Gateway Building (ECHDC)	Address Pending, Buffalo NY 14203
	Museum Sub Basement (ECHDC)	130 Main Street, Buffalo NY 14203
	Explore & More Children’s Museum (ECHDC Core & Shell)	130 Main Street, Buffalo NY 14203
<b>3</b>	<b>North Aud Development</b>	
	North Aud Block Parcel (Private)	Address Pending, Buffalo NY 14203
<b>4</b>	<b>East Canal</b>	
	East Canal (ECHDC)	101 Main Street, Buffalo NY 14203
<b>NA</b>	<b>Parking Lots</b>	
	Parking Lot 1 (for Private Developer w/ ECHDC BOH Area)	NA
	Parking Lot 2 (ECHDC)	NA

### **ZONE 1 - Central Wharf/City of Buffalo Property**

The Central Wharf area consists of a triangular shaped parcel bound by Marine Drive to the north, Main Street/Seymour H. Knox III Plaza to the east, and the Buffalo River to the south. This area is commonly known as Canalside and includes the cobblestone streets, the Commercial Slip, the Whipple Truss Bridge, open public spaces, historic interpretive elements, the ruins, the boardwalk, food and vendor kiosks and dockage. Seasonal public restrooms are located on the east end of Prime Street near the Carousel.

The Central Wharf property (Figure 3) is owned by the City of Buffalo and currently managed by ECHDC through an agreement for property operations, maintenance, events, security, concessions, marketing and seasonal vendor agreements.

**The City of Buffalo property included in this Zone is not included in the scope of this Contract with the exception of the Longshed, as described below.**

#### **Longshed**

The Longshed, located at the north end of the Central Wharf opened in September 2020. The Longshed strengthens Canalside’s year-round attractiveness and allows for a variety of programming, events, and vending space for future retail and/or restaurants with dramatic waterfront views.

The approximate 5,000 sf timber-framed structure is owned by ECHDC and is currently occupied through a 2-year lease agreement by the Buffalo Maritime Center for the purpose of constructing a replica Packet Boat. The building contains public restrooms which are open daily and accessed through a separate vestibule on the north side of the building. The building is owned by ECHDC and will be maintained by the selected Facility Manager.

### Carousel

The Buffalo Heritage Carousel opened in 2021 at the south end of the Central Wharf. The building and contents are owned, operated, and maintained by Buffalo Heritage Carousel, Inc. The property is owned by ECHDC and leased to the Buffalo Heritage Carousel.

**The Carousel property in this zone is not included in the scope of this contract.**

### Queen City Bike Ferry

The Queen City Bike Ferry, a seasonal, pedestrian/bicycle ferry service between the inner and outer harbor has a ramp and dock on the west side of the Commercial slip. The Ferry is owned by ECHDC and operated under a vendor agreement through 2025.

**The Queen City Bike Ferry property in this zone is not included in the scope of this contract.**

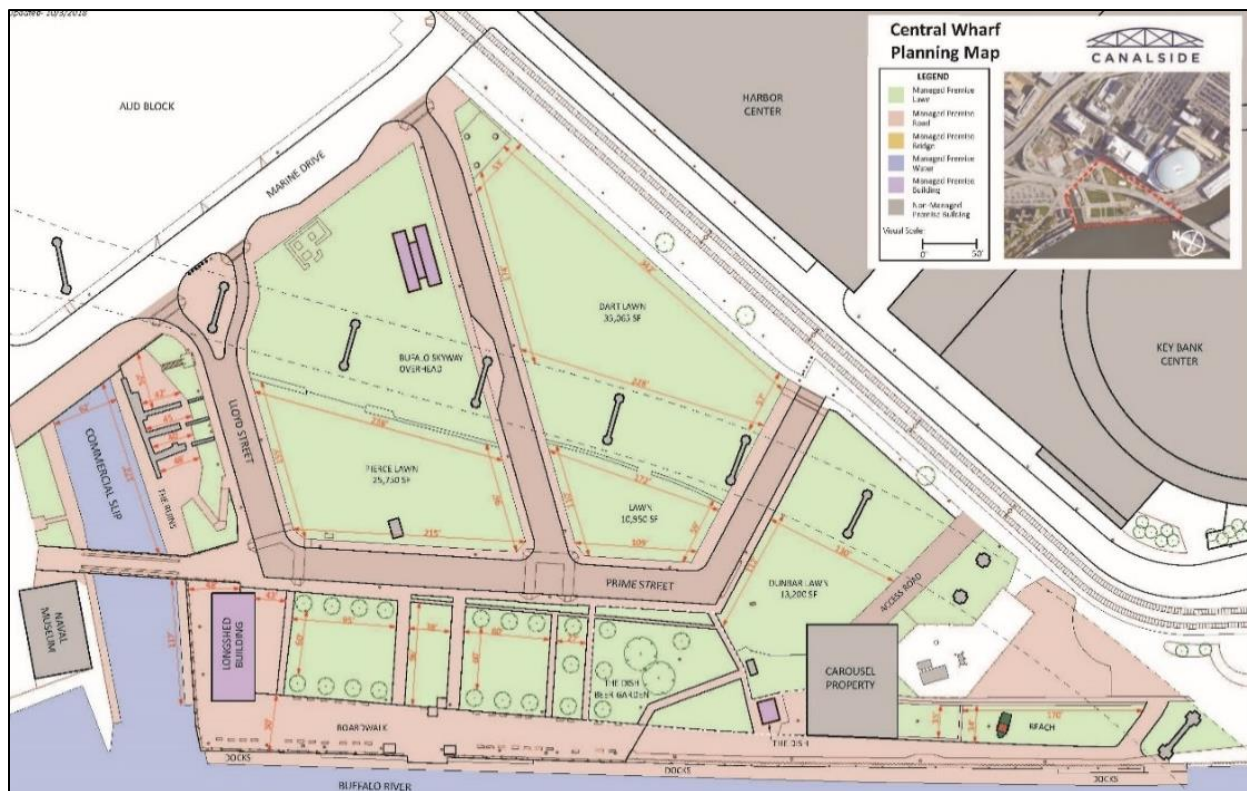


Figure 3 – Zone 1



## **ZONE 2 – Main Canal**

### **Main Canal & East Canal**

The Main Canal (Figure 4) is owned by ECHDC and will be maintained by the selected Facility Manager. The Main Canal is a year-round public space with fountains and paddle boats in the summer, roller skating in the fall, and ice rink activities and events in the winter including skating, curling, ice bikes, bumper cars, food vendor kiosks and igloos. There is a pavilion structure on the north side of the Main Canal which houses skating rentals, events space, and public restrooms.

Chillers, pumps, mechanical, electrical, and plumbing systems which support the Main Canal fountain/rink facilities are located in the subbasement of the Children's Museum. Pumps, mechanical, electrical, and plumbing systems which support the East Canal fountain are located in a vault on the north side of the zone.

### **Children's Museum**

The Ralph C. Wilson Jr., Explore & More Children's Museum opened in 2019. The 35,000sf building is owned by ECHDC and leased to the museum. The facility has a 0.21-acre footprint and consists of a restaurant on the towpath level, with three floors of museum exhibits above and a retail space along Marine Drive.

The sub-basement of the building is owned and occupied by ECHDC and houses MEP & FP systems for the museum building, rink/fountain operations and sitewide electrical panels and distribution systems. ECHDC maintains the exterior envelope, core and shell of the building, and surrounding site, while the tenant maintains interior spaces and exhibits (including the rooftop, exterior exhibit).

### **Gateway Building**

The Canalside Gateway Building is being developed by ECHDC on the southwest corner of the North Aud Block Site. This building will provide public amenities to the site as well as ADA access from street level to the towpath level. Future facility operations will be housed in the towpath level of the building. The building is approximately 3,000sf per floor and will be four stories high. It is expected that the remainder of the North Aud Block will be under construction for several years by private development.

**The *Gateway Building* improvement project will be completed in Spring 2025 and is included in the scope of this contract beginning on May 1, 2025.**

## **ZONE 3 – North Aud Development**

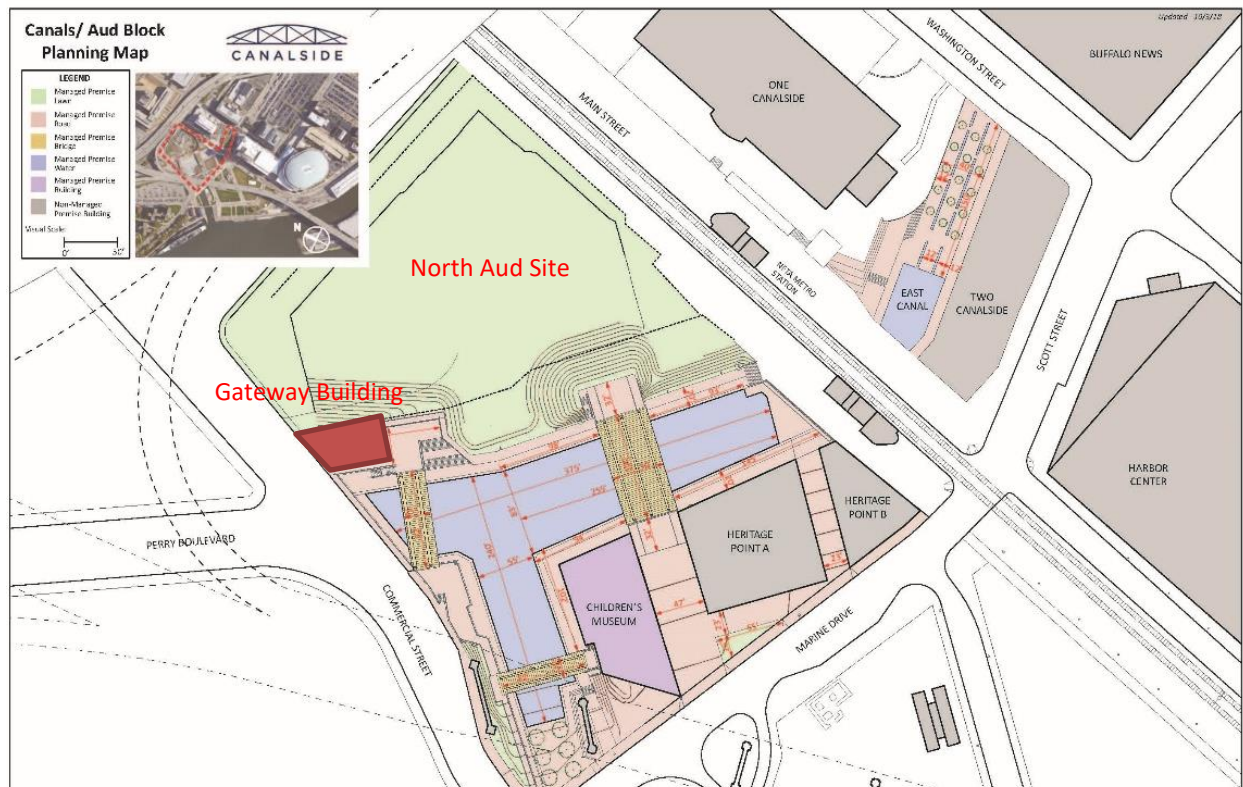
The North Aud Site (Figure 4) is slated for private development and is not included in the scope of the contract.

### ZONE 4 – East Canal

The East Canal (Figure 4) is an outdoor public space that features a granite plaza, a shallow pool of water, fountains, seating, lighting, and a shaded tree grove. The water feature is approximately 2 feet deep, with troughs to circulate the water, and lined with towpaths to allow the public to walk along the entire Canal. The East Canal fountain is drained and winterized in the winter months. Pumps, mechanical, electrical, and plumbing systems which support the East Canal fountain are located in a vault on the north side of the zone. The East Canal will be maintained by the selected Facility Manager.

## PARKING LOTS

ECHDC currently maintains and operates two parking lots east of the Main Canal (Figure 2), accessed from Commercial Street and Perry Boulevard. The property is owned by NYSDOT with ECHDC holding a Use & Occupancy Permit. Lot 2 provides 30-parking spaces for Canalside visitors, while Lot 1 is for future Heritage Point tenants. Sinatra Real Estate & Co. will be responsible for operations and maintenance of Lot 1 in 2024, however a fenced area in Lot 1 is reserved for ECHDC back of house operations and waste collection.



**Figure 4 – Zones 2, 3 and 4**

**The Longshed, Main Canal, Children’s Museum sub-basement and core & shell, Gateway Building, East Canal and Parking Lots are all included in the scope of services for the Facility Management contract.**

## OUTER HARBOR

In 2013, approximately 430 acres of waterfront land once designated as the “Port of Buffalo” was transferred from the Niagara Frontier Transportation Authority (“NFTA”) to ECHDC, whose mission and resources were better suited to support and expedite the land’s redevelopment.

The property consisting of piers, upland and underwater areas stretching along nearly 1.5 miles of Lake Erie waterfront in the City. The area is bisected by Fuhrmann Boulevard and is generally bounded on the north by the United States Coast Guard Base and Times Beach Diked Disposal Area, on the east by the Buffalo River and Fuhrmann Boulevard, on the south by the former Freezer Queen site, and on the west by Lake Erie.



Figure 5 – Outer Harbor

Approximately 182 acres of the transferred Outer Harbor lands, including the NFTA Boat Harbor, is now operated by the NYS Office of Parks, Recreation and Historic Preservation (the “NYSOPRHP”) as “Buffalo Harbor State Park”. The remaining approximately 247 acres of land north of Buffalo Harbor State Park is now operated by the ECHDC, which completed several capital improvements to increase public access to and use of this property, as well as conducted several community driven planning studies that have informed the current and future disposition of the site. Completed projects include Wilkeson Pointe (acquired by ECHDC in 2008 and 2012), The Queen City Bike Ferry Landing and the Lakeside Complex Bike Park and Event Space, habitat restoration areas and multi-use events space. Multi-use trails wrap the water’s edge connecting activation areas with seasonal vendors, event spaces, fitness programing, and food kiosks.

## Outer Harbor “Zones”

Table II-2

Zone “Name”	Address
Queen City Bike Ferry Landing	2 Fuhrmann Blvd, Buffalo, NY 14203
First Buffalo River Marina	10 Fuhrmann Blvd, Buffalo, NY 14203
	32 Fuhrmann Blvd, Buffalo, NY 14203
Wilkeson Pointe	175 Fuhrmann Blvd, Buffalo, NY 14203
	225 Fuhrmann Blvd, Buffalo, NY 14203
Michigan Pier	275 Fuhrmann Blvd, Buffalo, NY 14203
The Meadows	461 Fuhrmann Blvd, Buffalo, NY 14203
	525 Fuhrmann Blvd, Buffalo, NY 14203
Bell Slip	575 Fuhrmann Blvd, Buffalo, NY 14203
Lakeside & Terminal B	825 Fuhrmann Blvd, Buffalo, NY 14203
Terminal A	901 Fuhrmann Blvd, Buffalo, NY 14203

### **QUEEN CITY BIKE FERRY LANDING**

The bike ferry landing includes docking for the ferry, bike path access, a shipping container shelter and storage container. The QCBF is operated under a vendor agreement the site and structures are maintained by ECHDC.

**Maintenance of buildings and structures will be the responsibility of the Facility Manager.**

**Daily cleaning in this zone is not included in the scope of this contract and will be the responsibility of the Grounds Manager.**

### **FIRST BUFFALO RIVER MARINA**

The First Buffalo River Marina is operated and maintained through a vendor agreement. The site includes an office and service building, garage, and laydown area, two boat launch ramps, a travel lift, winter boat storage areas and shade structures. The Connecting Terminal Grain Elevator illuminated art installation is centrally located on the site and is maintained by ECHDC.

**The property in this zone is not included in the scope of this contract.**

### **WILKESON POINTE**

Wilkeson Pointe is a 22-acre subarea which contains a path network, public restrooms near Fuhrmann Boulevard, temporary food and beverage facilities, a 23-space paved parking lot, a small beach, playground, wind sculpture, fishing dock, and kayak launch. Activities in this area are operated through an outside vendor agreement.

While the edge improvements, restrooms and wind sculptures will remain, much of the site will be reconstructed to provide permanent amenities and refined spaces for programming and events. The existing path network will be modified to create a single entrance to Wilkeson Pointe. The revised path network removes confusion with the Times Beach Diked Disposal Area entrance

at the north end of the site, and the “bottleneck” near the restrooms at the south end of the site. The vehicular entrance and parking spaces will also be relocated to allow for a more naturalized water’s edge of Slip No. 3.

A permanent, seasonal comfort station including food, beverage, and restrooms will be constructed with ancillary seating areas consisting of decks, lawns, and sand areas. This area will become the center of activity at the site and will support programming, events, and seasonal recreational activities at the facility or at adjacent lawns and open spaces. In addition, the site is expected to continue to provide rental kiosks for kayaks, stand up paddle boards, and bicycles.

A large portion of the site will include soil amendments and maintainable landscaping improvements, with meadows, grasslands, and pollinator fields. An enhanced vegetated buffer along the northern edge would keep Times Beach Diked Disposal Area separated from this site.

**The proposed Wilkeson Pointe improvements will be under construction from September 2023 through September 2024. This Subarea will be available for activation beginning on April 1, 2025.**

**The Facility Manager will treat the restaurant as a tenant space and be responsible for the exterior envelope, MEP systems, and surrounding deck structure and lighting. The Public Space Management Operator will be responsible for maintaining the restaurant interior and equipment.**

**Daily cleaning in this zone is not included in the scope of this contract and will be the responsibility of the Grounds Manager.**

#### **Michigan Pier (Including Slip No. 2 & Slip No. 3)**

This 29-acre subarea consists of the Michigan Pier, Slip No. 2, Slip No. 3, and a wedge of land between these manmade features and Fuhrmann Boulevard. The three industrial structures were built and filled in by the City of Buffalo circa 1927, with the former “Municipal Pier” constructed at approximately 1,100 ft long by 220 ft. wide and surrounded by Slip No. 2 to the south and Slip No. 3 to the north. Sheet pile walls with above-grade concrete caps define these features while below-grade tie rods continue to support the pier structure. The pier edge has no drop protection (i.e., fence, railings and/or in-water ladders). The upland area is closed to the public with a chain-link fence.

The ECHDC has been coordinating with the US Army Corps of Engineer (“USACE”), Buffalo District’s proposal to make Section 204 Beneficial Use of Dredged Material for Ecosystem Restoration, along the Buffalo Outer Harbor – Slip No. 3 project. Slip No. 3 will be rehabilitated with the use of dredged materials from the Buffalo River to create approximately 6.7 acres of coastal wetland habitat along the Lake Erie shoreline.

**The Slip No. 3 rehabilitation project will be completed and available for activation on April 1, 2031.**



### **THE MEADOWS**

The Meadows is located just south of Slip No. 2. The site is currently partially paved and used for larger events and periodic event parking. The nearly 61-acre subarea currently includes the Greenbelt along the water's edge, asphalt, and gravel parking areas (i.e., once serving the former "Pier" restaurant), and large areas of invasive species, brush, and emerging cottonwood trees divided by a paved/gravel "Outer Harbor Drive" originating from the Bell Slip subarea.

The meadows area contains a cottonwood copse and sand dune natural habitat area. The contiguous asphalt, gravel, and grass areas have two points of controlled access to Fuhrmann Boulevard.

**Daily cleaning in this zone is not included in the scope of this contract and will be the responsibility of the Grounds Manager.**

### **BELL SLIP**

This 28-acre passive recreation subarea is defined by the watered Bell Slip and shoreline Greenbelt trail. Construction has begun on a 12-acre portion of the Bell Slip subarea. The Greenbelt trail will be modified to connect to the Fuhrmann Greenway in the vicinity of the roundabout entrance. The area will be completely reorganized with parking, a comfort station including restrooms, enhanced landscaping, composting center, forest, meadows, grasslands, and pollinator fields. The existing parking lot and building remnants will remain. A series of boardwalk trails will be constructed through the cottonwood stand and invasive species are to be removed. A large portion of the site will require soil amendments and landscaping improvements.

**The Bell Slip improvement project will be completed in 2023 and available for activation beginning on April 1, 2024.**

**Maintenance of buildings and structures will be the responsibility of the Facility Manager.**

**Daily cleaning in this zone is not included in the scope of this contract and will be the responsibility of the Grounds Manager.**

### **LAKESIDE & TERMINAL B**

The 41-acre Lakeside subarea was completed in 2019. The development is an extension of the multi-use trail system including a new bike park with both paved tracks and off-road trails for various skill levels, 53-space paved parking lot, 2.5-acre event lawn and large areas of regenerative landscapes. There is a small permanent kiosk and a shipping container with adjacent seating area for bike rentals and vending. Utilities to the plaza area include power, water, and data. Site lighting is provided in the parking lot and continues into the site for evening events.

In 2021, construction began on another 12-acre portion of the Lakeside subarea. This improvement project includes the conversion of Terminal B, a nearly 100,000sf steel frame and concrete block building that has sat vacant for over a decade, into a flexible, outdoor events space.

Terminal B will be completely rehabilitated and adaptively redefined to provide the infrastructure, space, and utilities to support large-scale events and programming opportunities. The existing building façade and roof have been removed with the steel frame and foundation remaining. A 9,000sf permanent stage/storage/greenroom facility will be created on the eastern edge of the building slab. The stage location allows for improved support for outdoor concert event operations.

The outdoor space on the eastern side of the site will be improved with soil amendments, landscaping, and hardscaping to allow for a space that is integrated with the building improvements. An area of pavement, turf and sloped lawn functionally supports the stage while adjoining to the existing 2.5-acre event lawn.

Paved and gravel parking lots for nearly 1,000 vehicles are located along the southern edge of this Zone.

**The Terminal B rehabilitation project will be completed in late 2023 and the entire Lakeside Subarea will be available for activation beginning on April 1, 2024.**

**The Facility Manager will treat the stage and “green room” as a tenant space and be responsible for the exterior envelope, MEP systems, and site amenities. The Public Space Management Operator will be responsible for maintaining the interior and equipment/FFE in the “green room”.**

**Daily cleaning in this zone is not included in the scope of this contract and will be the responsibility of the Grounds Manager.**

### **GREENBELT & SHORELINE**

The Outer Harbor property has several zones that are intended for passive recreation and access to the waterfront. These areas each have their own unique features connected by multi-use trails. The water’s edge pathway is part of the Greenway Nature Trail or “Greenbelt” constructed in 2008 that stretches 6,400 feet along the Lake Erie shoreline. ECHDC extended the northern end in 2016 and the southern end in 2019, connecting the Greenbelt to the multi-use Fuhrmann Boulevard Greenway and creating a complete “loop trail” on the Outer Harbor.

There are significant lengths of the shoreline that are armored with large stones requiring annual restoration from seiche storm impact. Slip walls at Michigan Pier, Slip No. 2 & Slip No. 3, Terminal A Slip No. 1 & Terminal B shoreline are typically sheet piling with a concrete cap. Bell Slip has a stone shoreline.

**Daily cleaning in this zone is not included in the scope of this contract and will be the responsibility of the Grounds Manager.**

### **PARKING AND VEHICULAR ACCESS**

Paved vehicular parking exists at Wilkeson Pointe, Bell Slip and the Lakeside Complex. A seasonal gravel road (i.e., “Outer Harbor Drive”) extends north from the Fuhrmann Boulevard roundabout allowing for events and event parking on the paved parking area of the event space and lawn area at 461 and 525 Fuhrmann Boulevard.

**Daily cleaning in parking areas and winter snow removal is not included in the scope of this contract and will be the responsibility of the Grounds Manager.**

### **TERMINAL A**

The approximately 30-acre Terminal A complex includes the Terminal building, three smaller buildings and Slip No. 1. The Terminal A complex is slated for private development and is not included in the scope of the contract.

### **MWBE & SDVOB Subcontractor Interest**

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service-Disabled Veteran Owned Businesses (SDVOBs) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to [ECHDCFacilitiesManagementRFP@esd.ny.gov](mailto:ECHDCFacilitiesManagementRFP@esd.ny.gov). Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

## **III. SCOPE OF WORK**

The Buffalo Waterfront aspires to be a world-class, waterfront destination, and holds incredibly high standards for the quality and management of our spaces, buildings and amenities.

The scope of Facility Management (“FM”) Services will include all staffing, materials, fuels, and supplies required for general operations and maintenance of buildings, structures, utility systems, rink/fountain, public spaces, FF&E, vehicles, capital project management, seasonal transitions, daily custodian services, etc. Scope of services may include but not be limited to the operation, maintenance, cleaning, repair, preventative maintenance, renovation, addition to or modification of the following structures, property, and systems:

- Permanent and temporary buildings and structures including, roofs, facades, windows, doors, joints, masonry/cladding systems, foundations, structural systems, interior build-out, finishes, furnishings, and equipment, etc.
- Interior and exterior MEP utility, fire protection, security, and communications systems
- Walkways, trails, roadways, bridges, fencing, civil/drainage structures, shoreline, docks, fountains/skating rink, property equipment
- Signage, site lighting, wayfinding, and public art installations

Property wide Grounds Management (“GM”) Services including mowing, trimming, landscape & tree maintenance, horticulture and snow removal will be provided through a separate Grounds Management contract. The Grounds Manager will also be responsible for daily cleaning, waste removal, and restroom maintenance at the Outer Harbor only.

While the majority of this scope of work, and the complementary GM services, defines “back-of-house” operations, these are supportive of ECHDC’s “front-of-house” operations. ECHDC is also currently soliciting for a Public Space Management Operator who will provide hospitality services, daily, seasonal, and annual programming, food and beverage sales, and marketing throughout the same Premises on the Buffalo Waterfront.

The Buffalo Waterfront Public Space Manager and Grounds Management scopes of work can be found at <https://esd.ny.gov/doing-business-ny/requests-proposals>.

It is expected that the Operator will work closely with the Public Space Management Operator, Grounds Management Contractor and ECHDC to ensure a seamless and high-quality experience for the visitor.

### **Task 1 - General Requirements**

#### **Account Management**

- A. The FM shall provide account management to ensure services are delivered consistent with the stated scope of work, specifications, and service expectations. Management services shall include financial tracking, staffing fulfillment analysis, sourcing, supervising, and evaluating current service delivery methods and submitting enhancement opportunities to improve quality, customer service, and cost performance to satisfy current and new operational requirements.
- B. The FM shall maintain effective customer relations and make client satisfaction a priority in providing services under the agreement. The FM is to develop and implement procedures to define and ensure the prompt handling of work requests, including proper communication and regularly scheduled coordination meetings.
- C. The FM will monitor and report on its progress in meeting objectives as requested by ECHDC.

#### **Financial Management and Tracking**

- A. The FM will be responsible for payment of all expenses related to the operation, maintenance, preventative maintenance, waste management, service contracts and capital projects on the property included but not limited to staffing, outside vendors and service contracts, inspections, materials and supplies required for operations, maintenance, preventative maintenance, cleaning, fuels, chemicals, etc.
  - The ECHDC will provide the FM with a tax-exempt certificate to be used on all Capital Projects.

- B. The FM is to provide monthly, quarterly, and year-to-date financial and operational reports with breakdown of all expenses, and operations, maintenance, preventive maintenance, and capital project tracking and year end, third party audit of expenses, at the FM's expense.
- C. Invoices are to be submitted to ECHDC on a quarterly bases for payment of base contract, reimbursable expenses, and outside vendor/contractor invoices related to staffing, maintenance and capital projects. Detailed support will need to be provided for all reimbursable expenses, outside vendor/contractor invoices, etc.
- D. Vendor/supplier/contractor quote and PO process is to be established for ECHDC approvals and expense tracking. Prompt payment is expected per the terms of agreements between the FM and outside vendors, suppliers, and contractors.
- E. The FM is to assist with annual budgeting and cost savings analysis.
- F. The FM shall include costs for implementation of Building Management Software (BMS) and Facility Maintenance software.

### **Staffing**

- A. The FM shall provide 24-hour comprehensive operations and maintenance service with daily hours of operation to fully complete all facility management tasks. Operating plans and strategies are to be implemented to ensure that adequate resources are always available (24/7/365) to properly support or respond to the scale and technical complexity of the building systems and operational needs. This shall include inclement weather, environmental or other events that may disrupt normal day-to-day operations.
- B. The FM shall coordinate property management tasks and seasonal transitions with ECHDC Senior Director of Facilities and ECHDC Facility Manager, Grounds Management Contractor, Events and Concessions Vendors and Owner's construction contractors and service providers.
- C. The FM staff shall include at least one full-time Manager who shall administer the program, a Building Superintendent, Licensed Stationary Engineers to cover shifts 24-hours/7 days a week during the ice rink season, operations, and custodial staff to cover shifts 7 days a week. Manager, Superintendent and Stationary Engineers shall be trained in Building Management Software (BMS), facility maintenance, work order and inventory tracking software. Trainings are to be provided for staff using BMS, work order software, and various maintenance tasks. The FM will provide any additional support staff required to meet any additional foreseen, or unforeseen needs to complete the full scope and requirements of the agreed upon contract.
- D. The FM shall develop staffing plans that minimize overtime expenses by planning and scheduling, in advance, recurring work tasks assigned to staff that are on all shifts.
- E. The FM shall maintain a high level of productivity and quality standard in the maintenance work force.



- F. The FM shall develop operating plans and strategies which ensure that adequate resources are always available to properly support or respond to the scale and technical complexity of building and property systems, equipment, events, or other occurrences.
- G. All staff shall be provided with uniforms suitable for year-round weather conditions. Uniforms shall be in keeping with Buffalo Waterfront brand and color standards and approved by ECHDC.
- H. The FM's employees should be trained to be customer-service oriented and to positively and politely interact with employees and the public when performing contract services. The FM's employees should be clean, courteous, efficient, and neat in appearance at all times and committed to offering the highest degree of service.
- I. The FM shall monitor any sub-contractor or service provider performance to ensure services are delivered consistent with agreement terms, technical requirements, and service specifications.

### **Safety, Risk Management and Quality Control**

- A. The FM shall develop and implement 24-hour emergency response and procedures for responding to building alarms and severe weather conditions that affect life safety, physical assets, or business operations. Ensure off-hour response to alarm condition procedures include on-site response by certified personnel within one (1) hour of the report.
- B. The FM shall follow all code and safety regulations in relation to any and all work accomplished under this contract. The FM shall develop emergency response plans as needed and be prepared to execute the support responsibilities identified by those plans. A designated safety officer is to coordinate all regulatory, building code, fire and safety requirements and to develop, implement, maintain, and be point of contact for regulatory agency inspections the following:
  - An effective program supporting all OSHA regulations, regulatory reporting requirements and safety related training requirements.
  - A safety data sheets program (SDS) for all chemicals used at any site contained within the portfolio under the FM's range of responsibilities.
- C. The FM shall provide ECHDC with copies of its safety program(s) as requested. The FM shall ensure that its subcontractors adhere to safety requirements.
- D. The FM shall maintain compliance at all times with all local, state and federal laws and/or regulations regarding use, storage and disposal of the chemicals or other hazardous materials used during their services performed at a Kilgore College location.
- E. All staff are to be provided with appropriate PPE to perform their duties safely.
- F. The FM shall provide quality improvement monitoring and evaluation programs.
- G. The FM shall be the subject matter expert and consultant for ECHDC to ensure services are delivered per required codes and industry standard practices, consistent with

agreement term of work completed by third-party vendor or performed by maintenance contractor.

- H. The FM shall work with ECHDC to develop and maintain a library of facilities drawings, operation and maintenance manuals, as built and shop drawings, safety programs, and emergency procedures.
- I. The FM shall provide the expertise to ensure all systems function and operate per design, operate reliably, and conserve energy usage. The FM is to identify improvement opportunities to increase reliability of operation, extend life cycle of equipment and reduce operation cost to including conservation of energy.
- J. The FM is to provide preventive/predictive maintenance and property inspections including, but not limited to, building mechanical, electrical, fire/life safety and plumbing systems to keep all in good working order and in compliance with codes, manufacturer's recommendations, and industry best practices.
- K. Daily tasks, operations, maintenance, and preventative maintenance services and required inspections are to be logged daily. Quality Control inspections and meetings with ECHDC are to be conducted on a regular basis, as part of seasonal transitions and at the completion of capital projects.

## **Task 2 - General Maintenance, Preventative Maintenance, Permits, Inspections**

- A. The FM shall be responsible for the general maintenance, preventative maintenance, service contracts, permits, inspections, testing and associated documentation for all buildings, structures, signage, public spaces, walkways, bridges, stairways, railings, fences, gates, etc. All maintenance items are to be documented in the asset management system. Manuals and warranty information are to be tracked and readily available as needed. The services will include, but not be limited to, the following utility/building systems:
  - HVAC, Mechanical and Refrigeration Systems, Chillers
  - Electrical Systems, Lighting, Power Distribution and Seasonal Decorative Lighting
  - Heated Sidewalk Snowmelt System and HeatTrak Snowmelt Mats
  - Plumbing Systems, Pumps, RPZ Backflow Preventors, Hotboxes
  - Fire Protection Systems
  - Data/Communications
  - Vertical Transportation
  - Emergency Generator
  - General Carpentry, Drywall, Paint, Etc.
  - Exterior Envelope; Windows, Doors, Siding, Roofing, Drainage, Etc.
- B. Various service contracts and inspections are currently in place and will be added to as projects are completed. It is the responsibility of the FM to maintain service contracts and inspection services and to bid/negotiate services as additional services are required or as contracts expire. The following service contracts and inspections are currently in place:

- Fire Protection Call Out Box - Buffalo Fire Department
  - Sprinkler Inspections - Davis Ulmer
  - Fire Extinguisher Inspections - Trost
  - Elevator - Otis Service/Ace Inspections
  - Chillers/Mechanical Systems - Trane
  - Backflow Preventor – American Backflow Service LLC
  - Masonry Annual Cleaning and Repair - FSR
  - Rink Surface Inspections - MJA
  - Alarm Systems - Fire Safety Systems
  - Bridge Inspections - WSP
- C. The FM shall be responsible for year-round rink and fountain operations. The fountains at the Main Canal and East Canal are filled in early May. The Main Canal is drained for Roller Skating late in the summer and cooled to build ice for skating in mid-November. The East Canal is drained in late October and winterized for the winter season. See the Seasonal Transitions Chart in **Appendix D**.
- Masonry cleaning and repointing is completed each spring prior to filling. All slabs, surfaces, grates and joints are to be cleaned prior to filling fountains and again at time of drainage.
  - Main Canal slab is inspected twice a year; once in the spring prior to filling and once at time of drainage prior to skating. Expansion joints are to be inspected and repaired annually in the spring.
  - Filling and draining fountains must be coordinated with Buffalo Water Authority and Buffalo Authority for testing and approval. Fountain circulation and filtration systems are to be cleaned drained and winterized at closure.
  - Fountains are cleaned throughout the day to remove trash, leaves and surface algae. Water is tested regularly for PH and alkalinity and chemicals are added to prevent algae and protect masonry surface.
  - The chillers are activated in mid-November to make ice and are maintained in operation throughout the winter skating season typically through the end of February. Chiller operations are to be monitored 24/7 by Licensed Stationary Engineers. A service contract is in place to support technical issues. The ice surface is to be constructed and maintained by an Ice Technician retained through the Public Space Management Contract. It is critical that the FM works in collaboration with the ice tech to maintain proper ice thicknesses and safe surface conditions for the season.
  - Glycol is monitored weekly in the summer and on each engineering shift when the chillers are active.
- D. Furniture, Fixtures, and Equipment/Tools (FF&E) Asset Tracking
- ECHDC assets such as furniture, fixtures and equipment including tools are currently tracked in an asset management software system. The FM will be

responsible to update and maintain the inventory system adding all new items at time of purchase.

- The FM will be responsible for securely storing all equipment and tools, monitoring usage and implementing sign out systems as necessary for asset tracking.

E. Vehicle Maintenance and Vehicle/Equipment Rentals

- ECHDC owns several vehicles used for property maintenance including a pickup truck with snow removal equipment, Zamboni, Zamboni trailer, gators, snow blowers, etc. The FM will be responsible for the all service, maintenance, fuel, oil changes, etc. for ECHDC owned, leased and rented vehicles.
- Periodically specialized equipment such as skid steer, fork lift, telehandler, front loader, etc. are required to move large items and complete seasonal transition. The FM will responsible for all equipment rental and coordination of use.

F. Lock and Key Systems

- The FM will be responsible for maintenance of lock and key systems including all hardware, keys, fobs, and padlocks. FM will assign and track key distribution.

G. BMS and Work Order Tracking Systems

- The FM shall use building management system (BMS) and building automation system (BAS) currently in place and train appropriate staff members on the use of each system.
- The FM shall identify, implement and monitor the use of a work order tracking system available to hand held devices and train key staff on the use of the system.

H. Public Art

- ECHDC is home to both seasonal and permanent art installations. The FM work with ECHDC to coordinate installations, maintain, protect and facilitate repair of artwork as needed.

**Task 3 – Janitorial/Custodial Services**

- A. The FM is responsible for daily janitorial/custodial services of the Canalside Property maintaining the cleanliness of the buildings, structures, site furnishings and surrounding grounds. Custodial services within the buildings includes cleaning/mopping/vacuuming floors, sanitizing surfaces, floors, collecting trash/recycling to ensure a clean space for the property users.
- B. FM is responsible for opening and closing of public restrooms at Canalside. Public Restrooms at the Longshed and Gateway Building are to be cleaned and stocked regularly. Public restrooms are to be inspected hourly for cleanliness and serviced as needed. Public Restrooms at the Outer Harbor will be the responsibility of the Grounds Manager.
- C. The Gateway Building is to have a full time Building Superintendent and office spaces are to receive nightly custodial services for cleaning offices, meeting rooms and restrooms.
- D. Graffiti and stickers are to be removed from surfaces promptly with appropriate solvents.

- E. Tenant spaces at the Children’s Museum, Longshed, Carousel, and (future) Terminal B “green room” and Wilkeson Pointe restaurant, are not included in this scope.

#### **Task 4 - Waste Management – Trash, Recycling, Dumpsters**

- A. The FM will be responsible for daily waste/recycling/litter collection at Canalside property. Emptying of waste receptacles, sweeping, removal of site litter is to be monitored throughout the day and removed regularly to avoid overflowing receptacles.
- B. Mixed material recycling is encouraged in all areas with appropriate receptacles available to users in exterior and interior spaces.
- C. The FM will be responsible for dumpster management at Canalside. A designated area for trash and mixed recycling containers will be designated in the parking lot accessed from Perry Boulevard.
- D. Waste Management at the Outer Harbor will be the responsibility of the Grounds Manager.

#### **Task 5 - Seasonal Transitions**

- A. The FM will be responsible for seasonal transitions preparing for opening the Canals and Outer Harbor public areas in the spring and winterizing spaces to prepare for winter and the skating season in the fall. The FM will coordinate tasks with ECHDC Senior Director of Facilities and ECHDC Facility Manager, Grounds Management Contractor, Public Space Management Operator. Seasonal transition tasks and assignments can be found in the chart in **Appendix D**.
- B. The FM will maintain off site storage and back of house areas to assist in the movement and storage of equipment supporting activations in various seasons.

#### **Task 6 - Capital Projects**

- A. The FM will work with ECHDC staff to identify, scope and procure O&M Capital Projects per ECHDC guidelines. Once a project is identified and defined in a request package, the FM will facilitate procuring quotes from qualified contractors. The FM will assist in evaluating the quotes to select the contractor or vendor and manage the project through completion. Capital projects will be reimbursed as part of the quarterly invoicing system with proper back up documentation.
- B. The FM will be responsible for purchasing, receiving and storage of FF&E including furniture, fixtures, equipment, tools, stock materials, light fixtures, etc. These purchases are to be approved by ECHDC Facility Manager and will be reimbursed as part of the quarterly invoicing system with proper back up documentation. All FF&E purchases to be track through the asset management system.
- C. The FM will be responsible for purchase, receiving and storage of materials and supplies including fuels, chemicals, cleaning supplies, restroom supplies, etc. All supply purchases are to be tracked and 10% stock material inventory is to be stored on site for easy access



at all times. Purchases will be reimbursed as part of the quarterly invoicing system with proper back up documentation.

#### **Task 7 - Pest Control**

- A. The FM shall be responsible for pest control services in non-food and beverage activation areas. The food and beverage activation areas will be the responsibility of the Events and Concessions vendor.
- B. Pest control services are to be use for periodic spraying to prevent nesting insects. As part of daily custodial services, structures and furnishings shall be cleared of cobwebs, spider, bee and hornet nests.

#### **Task 8 – Emergencies**

- A. The FM is responsible for implementation of 24-hour emergency response procedures. The emergency plan is to be reviewed and approved by ECHDC Senior Director of Facilities and ECHDC Facility Manager. Emergency procedures related to Events and Concessions are the responsibility of the vendor. All incidents are to be reported to ECHDC and documented in an incident report.

### **IV. SCHEDULE OF DATES**

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	January 19, 2023
Pre-bid Meeting (non-mandatory)	February 9, 2023 at 10:00am
Deadline for Submission of Questions	February 24, 2023
Deadline for ESD to Respond to Questions	March 9, 2023
Submission of Proposals (date and time)	May 4, 2023 at 2:00 PM EST
Interviews (if necessary)	Week of June 19, 2023
Announcement of Successful Bidder	September 2023
Anticipated Contract Start Date	December 1, 2023

The Pre-bid Meeting will begin outside the Longshed building (corner of Lloyd Street and Prime Street on the Central Wharf). This Meeting will conclude with a tour of Canalside followed by a tour of the Outer Harbor.

Please note, the Corporation reserves the right to change any of the dates stated in this RFP.

### **V. SELECTION CRITERIA**

Every respondent (“Bidder”) to this RFP should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to

the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

ECHDC reserves the right to make any and all decisions regarding the selection of proposals submitted, as well as the capacity to consider proposals received after the deadline.

### **General Proposal Requirements**

The selected Facilities Management team should be proficient and have demonstrated experience in projects of a similar nature. In evaluating proposals submitted pursuant to this request; the ECHDC places high value on the following factors, not necessarily in order of importance:

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services
- Experience of the Facilities Management company on similar properties
- Quality of work product as demonstrated in submitted work samples of similar contract services
- Conformity with or exceeding applicable ECHDC policies noted herein, including specific policies relating to non-discrimination and affirmative action subcontracting goals
- Fee proposal

### **Selection Process**

Final selection will be based on the Proposal score (100 points total) and the Interview Performance score (100 points total). The ECHDC reserves the right to:

- Seek clarification and revisions of proposals
- Seek a final and best offer from those firms short-listed
- Make an award under the RFP in whole or in part
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring full and complete understanding of a proposal and/or to determine a respondent's compliance with the requirements of the solicitation
- Make revisions to the scope of work after contract award to ensure that the project goals are met

It is expected that a maximum of three (3) applicants will be selected, or 'short-listed' for interviews. ECHDC reserves the right to forego the interview phase based on the proposal evaluations. Selection for interviews will be based on an independent evaluation of the submitted

proposals using the factors listed below. Selection for interviews shall be based on 'best value', made in accordance with the following evaluation criteria and weights as follows:

- Experience and qualifications of the proposed Facilities Management team to undertake the Scope of Services – 20 points;
- Organization chart indicating key management team members – 25 points
- Operations and staffing Plan – 25 points;
- Fee proposal – 25 points;
- Diversity Practices\* – 10 points

**\*Diversity Practices**

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using the attached Diversity Practices Scoring Matrix (**Appendix B**). Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire, submitted by each Respondent to the RFP.

## **VI. SUBMISSION OF PROPOSALS**

Every respondent to this RFP ("Bidder") should submit a proposal which clearly and concisely provides all the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

### **i. Technical Proposal**

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be organized with sections identified to match the specific information requested below:

- A. Table of Contents
- B. Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Project Approach and Staffing Plan
- E. Cost of Services and Anticipated Annual Expenses
- F. Diversity Practices

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein,

in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

#### A. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

#### B. Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate relevant experience by providing the following:

- Each respondent shall submit materials that highlight their unique strengths, breadth of knowledge and experience with similar projects
- A history of the company's experience providing services to large scale property owners of similar type including specific experience with public space management, publicly accessed buildings, rinks and fountains
- A representation that the company can devote significant and appropriate staffing to fulfill the scope of services
- Provide client references for Facility Management services and the names of contact persons who can provide references
- Any other information that you believe would make the company's work on behalf of ECHDC superior to that of other respondent's information

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

#### C. Staff Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.

- A description of the company's organizational structure noting the principals and professional staff who would work directly with ECHDC for the duration of this Project
- Resumes of key staff including Account Manager, on-site Property Manager, Building Superintendent, Licensed Stationary Engineer, etc.

#### D. Project Approach and Staffing Plan

In this section of the Technical Proposal, Bidders should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- A statement explaining the company's Facility Management philosophy
- A description of how the company would work with ECHDC and the various project partners
- A description of how the company intends to address the scope of services set forth in this RFP
- A description of staffing plans for each season

#### E. Cost of Services

Provide an annual Service Fee for the first five (5) years of Facilities Management Services as shown in the Fee Chart (see **Appendix F**). Include a Service Fee for the 4-month "Start-Up" period to commence prior to the full scope of services.

Additionally, provide an estimation of related Expenses per year. Existing service contracts and inspections, as described in Task 2.B above, should be assumed at \$15,000 annually and included in Expenses. Expenses should not include Capital Projects.

An annual construction budget (or "allowance") for Capital Projects will be provided by ECHDC. For purposes of estimating the annual Service Fee, assume a \$250,000 annual construction budget for Capital Projects in Year 1 and Year 2, and a \$300,000 annual construction budget in Years 3, 4 and 5.

The Bidder should provide a written explanation of any assumptions made when filling in the Fee Chart.

The total cost of the Service Fee, Expenses and Capital Projects should represent the Bidder's total Cost of Services.

#### F. Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See **Appendix B**).



## ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

- i. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
- ii. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal
- v. <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>
- vi. <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>
- vii. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
  - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
  - o [OCSD-2 - Staffing Plan](#)
  - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- viii. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- ix. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- x. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in Section IX of this RFP ("Procurement Forms and Requirements").

## Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hardcopies, emails) will not be accepted. When submitting each proposal, Bidders must comply with the following: Upload the main folder to the specific Dropbox: <https://www.dropbox.com/request/xeYYhQRYUEaWB4dgiimU>

Proper format: Please create a folder with company name – RFA title – date of Submission.

example: **OBXE, Inc. – Facilities Mgt. Services – 02.18.23**

Included in that main folder should be two sub-folders, one for Administrative and one for Technical. The main folder should be uploaded to the Dropbox by choosing the following option "Add Files → folders from computer". All documents in the folders should be properly labeled.

**Late proposals will not be considered for award.**

## **VII. QUESTIONS**

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section IV (Schedule of Dates) to [ECHDCFacilitiesManagementRFP@esd.ny.gov](mailto:ECHDCFacilitiesManagementRFP@esd.ny.gov). Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

## **VIII. GENERAL PROVISIONS**

The issuance of this RFP and the submission of a response by a Bidder or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Bidder;
- vii. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

**Required Approvals**

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

**Performance**

The Contractor's performance will be assessed by the Corporation according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

**Additional Services Requested**

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

**Contractor Staff**

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of

experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

## **IX. CONTRACTUAL REQUIREMENTS**

This section contains additional information about the forms that are required to be included in each Bidder's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

### **i. Conflicts of Interest**

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or

director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

**ii. State Finance Law Sections 139-j and 139-k forms**

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

[https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at: [http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf). All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

### **iii. Vendor Responsibility Questionnaire**

All Bidders to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website ([http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)) and execute accordingly pertaining to the company's trade industry. Per the website, Bidders are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

In addition, please see link to EO-192: <https://www.governor.ny.gov/news/no-192-executive-order-imposing-continuing-vendor-integrity-requirements-state-contracts>

#### **iv. Iran Divestment Act**

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to:

<https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

#### **v. Executive Order 16**

In accordance with New York State Executive Order 16 ("EO-16"), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

"By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16."

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO16-certification.pdf> and must be signed and included in all Proposals.

#### **vi. Executive Order 177**

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and



harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

**vii. Non-Discrimination and Contractor & Supplier Diversity Requirements**  
**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

#### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a QUARTERLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **Diversity Practices**

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See **Appendix B**).

### **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

### **Contract Goals**

- A. ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

#### **SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder’s bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

#### **Request for Waiver**

- C. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- D. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- E. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.
- F. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

#### **Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.

(2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

(3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.

(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

#### **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

#### **Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

#### **viii. Encouraging the Use of NYS Businesses in Contract Performance Form**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

#### **ix. Certification under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-



220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

**x. Schedule A**

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: [https://esd.ny.gov/sites/default/files/ScheduleA-Services\\_Materials-3818.pdf](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

**xi. Project Sunlight**

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

**xii. Insurance Requirements**

Please note that upon selection for this Project, the selected Bidder will be required to demonstrate/provide the following insurance coverage protecting against any and all claims brought at the Licensed Premises. The Operator shall maintain or cause to be maintained Insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a sub-contract agreement:

## **1. Workers' Compensation Insurance:**

(a) Workers' Compensation - Statutory Limits; Employer's Liability

(b) Employer Liability Limits:

1. \$1,000,000 Bodily Injury each Accident
2. \$1,000,000 Bodily Injury by Disease – Policy Limit
3. \$1,000,000 Bodily Injury by Disease – Each Employee

## **2. Commercial General Liability Insurance**

(a) Limits of Liability

1. \$1,000,000 Each Occurrence
2. \$2,000,000 General Aggregate
3. \$2,000,000 Products/Completed Operations Aggregate
4. \$5,000 Medical Expense Limit (any one person)
5. \$50,000 Fire Damage Legal liability (any one fire)

(b) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.

1. These limits shall apply on a “per project” basis.
2. Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
3. Contractual Liability and Additional Insured Coverage shall not include any limitations for injuries to your own employees.
4. Products and Completed Operations Liability shall be maintained for three (3) years beyond completion and acceptance of the Project.
5. There shall be no XCU exclusion (Explosion, Collapse or Underground),
6. There shall be no “Labor Law” or other gravity related injuries exclusion.
7. Shall include coverage for Independent Contractors
8. Shall include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the Project
9. Delete contractual exclusion, or any other policy exclusions, for work one within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement CG2417-Contractual Liability-Railroads
10. Additional Insured Endorsements: All commercial general liability policies shall include the ESD and ECHDC as additional insureds pursuant to endorsements satisfactory to ESD and ECHDC.

## **3. Automobile Liability Insurance**

(a) \$1,000,000 Bodily Injury/Property Damage Combined Single Limit

(b) Commercial Automobile Liability Insurance to cover all vehicles including owned, non-owned and hired.

#### **4. Excess Liability**

Limits of Liability: \$25,000,000

Coverage should be at least as broad as and follow form of Employer's Liability, General Liability, and Auto Liability. Policy to include a drop down provision over primary policies.

#### **5. Crime/Fidelity**

Employee theft	\$10,000,000
Forgery or alteration	\$10,000,000
Theft, robbery and burglary (inside and outside premises)	\$10,000,000
Third-party off Premises	\$10,000,000
Computer fraud	\$10,000,000
Money orders and counterfeit paper currency	\$10,000,000

Single loss deductible shall not be more than \$25,000.

**Certificates of Insurance** - Certificates of insurance reasonably acceptable to the ESD/ECHDC shall be filed with the ESD/ECHDC within ten (10) days after award of the contract to the Facility Manager and prior to commencement of the Work. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be materially modified, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to ESD/ECHDC. The provisions of this Section shall apply to all policies of insurance required to be maintained by the Facility Manager pursuant to the Contract Documents.

**Other Insurance** - Any type of insurance or any increase of limits of liability not described in this section which the Facility Manager requires for their own protection or on account of any statute shall be their own responsibility and at their own expense.

As respects General Liability, the additional insured endorsements shall be on a form at least as broad as ISO Forms CG2010 07 04 & CG2037 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which ESD & ECHDC, are required to be named as Additional Insureds. The additional insured coverage shall include completed operations coverage for the Additional Insureds for a period of not less than 36 months after completion of the project.

- (a) Facility Manager shall, by specific endorsement to its primary commercial general liability policy, and automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with any other valid and collectible insurance available to the Additional Insureds.
- (b) Facility Manager shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and not concurrent with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.
- (c) Facility Manager shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements;
- (d) Facility Manager shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include products liability and completed operations, with the provision that coverage shall extended for a period of at least 36 months after completion of the project;
- (e) Facility Manager shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not be considered as damages so as to erode the policy limits required under sections 1 – 5 above.
- (f) All policies shall contain a waiver of subrogation in favor of ESD and all others as required by contract.
- (g) Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by ESD.
- (h) The Facility Manager shall require all subcontractors to include Additional Insured endorsement CG 2038 04 13 and CG 20 37 07 04 with respect to General Liability.
- (i) Certificates evidencing the foregoing insurance coverages must be furnished by Facility Manager to, and be approved by ESD, before the proposal can be considered. Certificates, Notices of Cancellation, or changes, etc., are to be sent by Facility Manager, directly to ESD at 633 Third Ave., Contracts Administration, 35th Floor, New York, NY 10017. Facility Manager or Facility Manager's agent and Facility Manager's insurance carrier(s) must reconcile all policy requirements to the satisfaction of ESD. Facility Manager shall provide certified copies of all policies required under this OR within 15 days after receipt of request by the Owner for such information.

**No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.**

- A. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- VII by A.M. Best and Company or meet such other requirements as are acceptable to the ESD/ECHDC.
- B. Should the Facility Manager fail to provide or maintain any insurance required by this contract, the ESD/ECHDC may, after providing written notice to the Facility Manager, purchase insurance complying with the requirements of this Article and charge back such purchase to the Facility Manager.
- C. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Facility Manager shall immediately cease work on the Project. The Facility Manager shall not resume work on the Project until authorized to do so by the ESD/ECHDC. Any delay or time lost as a result of the Facility Manager not having insurance required by this Article shall not give rise to a delay claim or any other claim against the ESD/ECHDC or the Client.
- D. Notwithstanding any other provision in this Article, the ESD/ECHDC may require the Facility Manager to provide, at the expense of the ESD/ECHDC, any other form or limit of insurance necessary to secure the interests of the ESD/ECHDC.
- E. The Facility Manager shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Facility Manager. The requirement to secure and maintain such insurance is solely for the benefit of the Facility Manager. Failure of the Facility Manager to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.
- F. Neither the procurement nor the maintenance of any type of insurance by the ESD/ECHDC or the Facility Manager shall in any way be construed or deemed to limit, discharge, waive or release the Facility Manager from any of the obligations or risks accepted by the Facility Manager or to be a limitation on the nature or extent of said obligations and risks of the Facility Manager.
- G. The Contract may, at the sole option of the ESD/ECHDC, be declared void and of no effect if the Facility Manager fails to comply with the provisions of this Article.
- H. The Facility Manager and its Trade Operators shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the ESD/ECHDC and of the insurance companies issuing such policies.

An individual certificate (including hold harmless) must be provided to each of the following organizations: New York State Urban Development Corporation d/b/a as Empire State

Development (ESD), the Erie Canal Harbor Development Corporation (ECHDC), the State of New York, the Buffalo Sewer Authority, the New York State Department of Transportation (NYSDOT), the City of Buffalo and the Ralph C. Wilson Jr. Explore & More Children's Museum.

New York State Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

**xiii. W-9 Form**

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.